

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE**

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**RANDEL EDWARD PAGE, JR.**

**Plaintiff,**

**v.**

**No. 3:23-cv-00851**

**UNITED STATES OF AMERICA;  
STATE OF TENNESSEE; EPIC SYSTEMS  
CORPORATION; CORVEL CORPORATION;  
BAPTIST MEMORIAL HEALTH CARE  
CORPORATION; METHODIST LE BONHEUR  
HEALTHCARE; and THE WEST CLINIC, PLLC,**

**Judge William Campbell, Jr.  
Magistrate Judge Alistair Newbern**

**Defendants.**

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**RESPONSE BY DEFENDANT BAPTIST MEMORIAL HEALTH CARE  
CORPORATION IN OPPOSITION TO PLAINTIFF’S  
REQUEST FOR ENTRY OF DEFAULT**

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On August 5, 2024, *after* his claims had already been dismissed by the Court, Plaintiff filed a “Request for Entry of Default” under Rule 55 against BMHCC. (ECF No. 58.) This request is plainly improper under the Federal Rules of Civil Procedure and has no factual or legal support.

Rule 55 permits the entry of default only “[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend.” FED. R. CIV. P. 55(a). Here, however, BMHCC has already defended against Plaintiff’s allegations—successfully, at that. BMHCC was served with the Complaint on September 18, 2023. (ECF No. 22.) It timely filed a motion to dismiss on October 9, 2023. (ECF Nos. 7-8.) Because it filed this motion to dismiss, BMHCC was not required to also answer the Complaint unless and until the Court denied the motion. *E.g., Norris v. Murfreesboro Leased Hous. Assocs. I, LP*, No. 3:18-cv-00750, 2020 U.S. Dist. LEXIS 77990, at \*5 (M.D. Tenn. May 4, 2020) (“In fact, the Federal Rules of Civil Procedure

allow that a defendant may file a motion to dismiss asserting any of the grounds listed in Rule 12 before serving an answer and the filing of such a motion alters the time period for filing an answer, in the event that the motion is denied.”) (citing Fed. R. Civ. P. 12(a)(4)).

On June 17, 2024, the Magistrate Judge filed her Report and Recommendations, recommending that the Court grant BMHCC’s motion and dismiss Plaintiff’s claims. (ECF No. 48.) The Court then adopted the Magistrate Judge’s Report and Recommendations and granted BMHCC’s motion on July 26, 2024. (ECF No. 56.) The Plaintiff filed a “motion in opposition” to the Court’s dismissal of his claims (ECF No. 57), which the Court treated as a motion for reconsideration and denied on August 7, 2024 (ECF No. 59). Because BMHCC’s motion to dismiss has been granted and the claims against it dismissed, it is under no obligation to answer Plaintiff’s Complaint. *Norris*, 2020 U.S. Dist. LEXIS 77990, at \*5.

Simply put, no default can be entered against BMHCC when BMHCC has already successfully moved to dismiss all of the claims Plaintiff asserted against it.

### **CONCLUSION**

Plaintiff has not and cannot show that BMHCC “failed to plead or otherwise defend” this matter, and there is no basis for entry of default under Rule 55. Therefore, BMHCC respectfully requests that the Court deny Plaintiff’s “Request for Default.”

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I hereby certify that on the 19th day of August, 2024, a true and correct copy of the foregoing document was served via U.S. Mail on Plaintiff, Randel Edward Page, Jr., 13535 Cathy Road, Byhalia, MS 38611, and on the following counsel of record via the Court's electronic filing system:

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